HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6478 OF 2002.

Pune Merchants Co-op. Bank
Limited. ..Petitioner.

Versus.

Dilip Shankar Patil & Ors. ..Respondents.

Shri. Ashitosh M. Kulkarni i/b Shri. A. A. Kumbhkoni for the Petitioner.

Shri. Sanjay S. Kshirsagar for the respondent no.1.

CORAM: S.B.MHASE, J.

DATE : MAY 3, 2006.

P.C.

1. Learned counsel for the petitioner has placed on record letter issued by the Manager of the Petitioner - Bank. So far as the contents of the letter are concerned, this Court does not express any opinion. However, the fact transpires that in the earlier proceeding under section 101, order was passed dismissing the said proceeding with a direction that the petitioner shall file a suit. In stead of filing a suit, another application was filed under section 101 which has been rightly rejected by the authorities below. In view of these circumstances, the petitioner submits that he may be allowed to withdraw this petition with a liberty

to file a suit and/or dispute for recovery of the amounts due from and payable by the respondents. It is to be noted that since there is an order directing the petitioner to file a suit, it will not be appropriate for this Court to grant a further liberty to file a dispute under section 91 of the Co-operative Societies Act. Therefore, the petitioner is allowed to withdraw this writ petition with a liberty to file a suit, as already directed by the Assistant Registrar. It is made clear that since this Court has allowed to withdraw the petition with liberty, it shall not be treated as a starting point for limitation, if any, involved in respect of the proposed suit and such defence if taken by the respondents will have to be considered by the concerned Court on merit.

(S.B.MHASE, J.)